

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.Crl.P.No.149 OF 2017

ORDER:

This petition is filed under Section 407 of Code of Criminal Procedure (for short "Cr.P.C.") to withdraw C.C.No.456 of 2015 pending on the file of the IV Judicial First Class Magistrate, Siddipet and transfer the same to XX Metropolitan Magistrate, Malkajagiri on the ground that the respondent Nos.1 to 7 are trying to kill the petitioner with the help of anti-social elements while she was attending the Court on the dates of adjournments and that there is threat to the life of the petitioner and unless C.C.No.456 of 2015 is withdrawn from the Court of IV Judicial First Class Magistrate, Siddipet, it is difficult for the petitioner to face the trial before the Magistrate.

Section 407 of Cr.P.C. deals with powers of High Court to withdraw and transfer cases and appeals, which reads thus:

"407. Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial of to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provided that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197."

The present petition is filed under Section 407 of Cr.P.C. apprehending that the petitioner will not get fair justice in view of threat.

No doubt, there is allegation that the petitioner is facing life threat in the hands of the respondents, but the said allegation is not substantiated by any material.

In “***Parminder Kaur (Smt.) v. State of Uttar Pradesh***¹”, the Apex Court held that vague and unfounded allegations in transfer application against the respondents would not form the basis for transfer while exercising power under Section 406 of the Code of Criminal Procedure.

In the facts of the above judgment, the first ground urged by the petitioner is that if the petitioner has to go to Rampur to attend the proceedings in the trial Court, her safety would be in danger or she apprehends physical harm to herself from respondent No. 2 or anti-social elements and the Court concluded that it is too nebulous a ground for transferring the cases from the trial Court, Rampur, to the Court of competent jurisdiction at Delhi or Chandigarh. The petitioner has not substantiated her apprehension of threat or bodily harm or intimidation from respondent No.2 or other anti-social elements as alleged by her.

The facts are almost identical to the present case and the allegation made against the respondents is unsubstantiated by any material. Similarly, the petition is silent as to the date and time of such threat by the respondents. In the absence of any details, making bald allegation that the petitioner is facing life threat in the hands of the respondents, the petition cannot be allowed.

Yet, the other circumstance is that when the petitioner is facing life threat while attending Court, the petitioner ought to have complained to the Presiding Officer of the Court about the threat she received from the hands of the respondents or anti-social elements as alleged in the petition. At least, the petitioner would have given a report to police complaining threat in the hands of the respondents. In the absence of such material, it is difficult to uphold that the

¹ (2007) 15 SCC 307

petitioner is facing life threat to exercise power under Section 407 of Cr.P.C. to withdraw C.C.No.456 of 2015 from the Court of IV Judicial First Class Magistrate, Siddipet and transfer the same to the XX Metropolitan Magistrate, Malkajgiri by applying the principle laid down by the Apex Court in “**Parminder Kaur (Smt.) v. State of Uttar Pradesh**” (referred above). Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

12.06.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY